

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

JOY MACKELL,  
 Plaintiff,

v.

WELLS FARGO HOME MORTGAGE, et  
 al.,  
 Defendants.

Case No. 16-cv-04202-BLF

**ORDER GRANTING MOTION TO FILE  
 A LATE BRIEF**

[Re: ECF 33]


Plaintiff Joy Mackell (“Mackell”) moves the Court for leave to file a late opposition to Defendants’ motion to dismiss under Fed. R. Civ. P. 6(b). ECF 33. Mackell argues that there is good cause because the opposition had already been prepared but was not filed due to an inadvertent clerical error. *Id.* Mackell further argues that there would be no prejudice to Defendants because Defendants could still to file their reply in support of their motion to dismiss.

Under Rule 6(b), a “determination of whether neglect is excusable is an equitable one that depends on at least four factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith.” *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000). The Court finds that there is no danger of prejudice to Defendants because the hearing for Defendants’ motion to dismiss has been vacated and a reply could still be filed. Moreover, Defendants have not opposed this motion to file a late opposition. At this early stage of the case, the late opposition would have no significant impact on the progression of the case. The Court additionally finds the inadvertent clerical error to be an excusable neglect. Based on these reasons, the Court GRANTS Mackell’s motion for leave to file a late opposition to Defendants’ motion to dismiss.

1 Mackell shall file the opposition attached as Exhibit A to its administrative motion, ECF  
2 34-1, as a separate docket entry on or before December 13, 2016. Defendants shall file their reply  
3 on or before December 20, 2016. The Court will then rule on Defendants' motion to dismiss on  
4 the submitted papers without a hearing.

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6 **IT IS SO ORDERED.**

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8 Dated: December 9, 2016

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10 BETH LABSON FREEMAN  
11 United States District Judge  
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United States District Court  
Northern District of California